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#SayHerName Captured: Using Video to Challenge Law Enforcement Violence Against Women

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CHAPTER 10

#SAYHERNAME CAPTURED: USING VIDEO TO CHALLENGE LAW ENFORCEMENT VIOLENCE AGAINST WOMEN

Amber A. Baylor*

I. INTRODUCTION

Kianga Mweba's cellphone camera blurs into darkness broken by flashes of lights surrounding her car. From the audio of her cellphone recording, one can hear the officer yell and Kianga Mweba scream as she is pulled out of the car and tased.¹ Mweba, arrested as she filmed the police detaining a man on the street, was charged with attempted assault on an officer. After recovering footage from her phone, her defense attorney produced the video as evidence against the criminal charges.² Now the recording is a key piece of evidence in a lawsuit against the department. Mweba's experience, captured by her cellphone camera, rallied activists in Baltimore and across the country in demanding change to policing practices.³ This recording of police officers violently taking down Mweba was one of many videos released this year showing people of color violently seized by police in cities across the U.S.⁴ The footage unveils the hidden story of the violence many women have faced in abusive police encounters.

Recorded encounters between women of color and police officers have been invaluable in bringing the reality of these interactions into the living rooms of otherwise unknowing Americans.⁵ The recordings are instrumental pieces of documentation and evidence, with the power to impact verdicts and galvanize the domestic struggle for human rights outside of the courtroom. They also are fraught with ethical issues that must be addressed by attorneys and activists hoping they effect change. Complexities such as implicit biases, editing and sourcing of videos, anonymity for those attacked and bystanders, and vicarious trauma on affected communities complicate use of violent police encounter videos.

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¹ Kianga Mwamba, WITNESS Media Lab, https://lab.witness.org/portfolio_page/kianga-mwamba/.

² The arrest footage initially appeared to be erased from Mweba's confiscated phone though Mweba was able to recover a backup of the video. *Id.*

³ *Id.*

⁴ Madeline Bair, *Caught on Camera: Police abuse in the U.S.*, WITNESS Media Lab, <https://lab.witness.org/caught-on-camera-police-abuse-in-the-u-s/>.

⁵ *Id.*

II. IDENTIFICATION OF OVERALL TRENDS

A. Cellphone Footage Has Increased Attention on Police Violence Against Women

The ubiquity of smartphones has transformed concerned citizens into potential photojournalists. We have the ability to witness the corners of each other's lives, including notably, those that have traditionally been marginalized. In July 2015, the American Bar Association and NAACP Legal Defense and Education Fund issued a Joint Statement on Eliminating Bias in the Criminal Justice System. The statement acknowledges the role of videos capturing the encounters between people of color and police this year.⁶ Where traditionally, encounters between people of color and police have been an experience limited to members of affected communities – now that experience is accessible to the broader public. Video is important because citizens serve as witness to the abuses that otherwise would remain undocumented.⁷ In particular, the advent of video recordings of police encounters reveals the disparate and violent treatment women of color face.

As gender equality advocates state, “women are not a secondary casualty” of violence from police.⁸ Cellphone and surveillance footage captured the arrest of Sandra Bland,⁹ the assault on a teenager at a pool party in Texas,¹⁰ the brutalization of Duanna Johnson in a Memphis jail,¹¹ and the tackling of a young African American girl in her classroom by a school “safety” officer.¹² Despite the existence of these images, the dominant discourse surrounding violent police encounters still envisions men as the only victims.

B. #SayHerName Campaign Addresses Intersectional Concerns of Women of Color

Impactful reports about the impact of police violence on the lives of women of color have had a significant impact in addressing police reforms. One report, “Say Her Name: Resisting Police Brutality Against Black Women,” released by the African American Policy Forum, provides a number of frameworks for understanding how women are singularly affected by law enforcement.¹³ In particular, the report highlights that the economic and

⁶ American Bar Association and NAACP Legal Defense Fund, *Joint Statement on Eliminating Bias in the Criminal Justice System*, July 2015, http://www.americanbar.org/content/dam/aba/images/abanews/aba-ldf_statement.pdf.

⁷ The federal government, for example, does not keep an accessible account of people killed by police. Rashad Robinson, *The US Government Could Count Those Killed by Police, but It's Chosen Not To*, THE GUARDIAN, June 3, 2015, <http://www.theguardian.com/commentisfree/2015/jun/03/us-government-could-count-killed-by-police-chosen-not-to>.

⁸ See Dani McClain, *Black Women Aren't Just Secondary Casualties of Aggressive Policing*, THE NATION, Apr. 27, 2015, <http://www.thenation.com/article/black-women-arent-just-secondary-casualties-aggressive-policing/>.

⁹ Ed Payne and Dana Ford, *Sandra Bland Video Case: Details Only Make It Murkier*, CNN.com, July 23, 2015, <http://www.cnn.com/2015/07/23/us/sandra-bland-arrest-death/>.

¹⁰ Ashley Fantz, Holly Yan, and Catherine E. Shoichet, “Texas Pool Party Chaos: What Role Did Race Play?,” CNN.com, <http://www.cnn.com/2015/06/09/us/mckinney-texas-pool-party-video/>.

¹¹ Robbie Brown, *Murder of Transgender Woman Revives Scrutiny*, N.Y. TIMES, Nov. 17, 2008, <http://www.nytimes.com/2008/11/18/us/18memphis.html>.

¹² Richard Fausset and Ashley Southall, *Video Shows Officer Flipping Student in South Carolina, Prompting Inquiry*, N.Y. TIMES, Oct. 28, 2015, <http://www.nytimes.com/2015/10/27/us/officers-classroom-fight-with-student-is-caught-on-video.html>.

¹³ Kimberlé Williams Crenshaw and Andrea Ritchie, *Say Her Name: Resisting Police Brutality Against Black Women*, African American Policy Forum (2015),

social vulnerability of women of color impacts police practices. The related hashtag, #SayHerName has connected activists engaged in efforts to challenge the treatment of women by law enforcement.¹⁴

Police encounters with women this year provided a stage to play out the complications of the intersectional position of women of color addressed in the report. Gender equality advocates have noted that non-conforming women suffer more at the hands of police. Women are often perceived as suspicious and further mistreated when their behavior does not align with an officer's gender expectations.¹⁵ Many women's encounters with police have resulted in disastrous consequences, particularly for women that are assertive, engaged in self-protection, perceived as misbehaving on a minor level, or simply gender non-conforming.

These intersectional concerns are present in images captured showing law enforcement violence against women and girls of color. They display the consequences of assertiveness, gender typing, and allegations of minor offenses.

- The consequence of discriminatory car stops is depicted in the video captured of the stop of Sandra Bland, culled from a Texas police dashboard camera that went viral after Bland died in a police cell. As a report from Missouri indicates, in many places women of color are pulled over in discriminatory car stops at a higher rate than men of color.¹⁶ Sandra Bland was pulled over for alleged failure to use a blinker. The video shows the officer's prickling response to her non-deferential behavior. Sandra Bland's assertiveness is captured in the audio and appears to be the trigger for the officer's anger. According to a bystander, she was strong-armed to the ground off-camera.¹⁷
- As the Black Girls Matter report confirms, Black girls are subjected to suspensions at six times the rate of White girls.¹⁸ This is a larger disparity than the reported disparity between boys.¹⁹ Footage of a girl in South Carolina and a law enforcement officer at a high school disrupted any misgivings that schools are bucolic, safe spaces for girls of color. The video shows the girl thrown to the ground with her desk, picked up, and tossed across the classroom floor.²⁰ That classroom assault echoed a similar incident in McKinney, Texas, where an officer called to a pool party tackled a teenage girl. The city of McKinney is exploring policing reform after a resulting investigation and potential lawsuit.²¹

http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/APF_SMN_Brief_Full_singles-min.pdf.

¹⁴ Samantha Michaels, *Police kill black women too—and we don't talk about it enough*, MOTHER JONES, June 11, 2015, <http://www.motherjones.com/politics/2015/06/say-her-name-andrea-ritchie-black-lives-matter>.

¹⁵ *Id.* Another report from African American Policy Forum on the treatment of girls in the criminal justice system confirms this. Kimberly Williams Crenshaw, *Black Girls Matter: Pushed Out, Over policed and Underprotected*, African American Policy Forum 9 (2015),

http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/54d2d37ce4b024b41443b0ba/1423102844010/BlackGirlsMatter_Report.pdf.

¹⁶ See <http://ago.mo.gov/docs/default-source/public-safety/2013agencyreports.pdf?sfvrsn=2>.

¹⁷ <https://www.bostonglobe.com/arts/2015/07/23/video-bland-arrest-tape-doesn-lie/fqhkLb94dREEcjTNb4EcxM/story.html>.

¹⁸ Crenshaw, *supra* note 15, at 16-21.

¹⁹ *Id.*

²⁰ Fausset and Southall, *supra* note 12.

²¹ Fantz, Yan, and Shoichet, *supra* note 10.

- The experiences of transgender women are another central issue in advocacy to abate law enforcement violence in encounters with women of color. A video, this time captured by jail surveillance cameras, was a key component in activism surrounding an assault on a woman in a Memphis jail. Duanna Johnson, a transgender woman was pepper-sprayed and pummeled with handcuffs by correctional officers while in a county detention. The violence in the video led to criminal charges against the correctional officers.²²

Although videos show women of color as victims of prejudicial law enforcement - the experiences of woman and girls have traditionally been peripheral in discussions about police brutality. Advocates wonder if the videos are enough to change cultural perceptions leading to violent policing of women of color.

C. Use of Video Footage in Activism

Video activism has influenced our understanding of violence against people of color. Where recounted experiences of violence have always been available, the impact of visual images in the past few years has stirred a strong response in the general public. Images captured from videos give viewers the impression that they are witnessing an unfiltered truth. The illusion of truth is particularly strong where cellphones and surveillance cameras capture the videos spontaneously.

Advocates have used videos in a number of ways to challenge the mistreatment of women. In many cases, the videos are introduced as evidence by defense counsel in criminal cases. For instance, in Kiana Mwamba's case, after she was able to recapture video of her arrest that was deleted from her confiscated phone, the Baltimore district attorney dropped criminal charges against Kiana Mwamba.²³ Cellphone videos, taken from intimate vantage points, travel rapidly to the larger public, often fueled by hashtag associations.²⁴ The release of video has helped identify "abuses and patterns beyond what is seen on camera."²⁵ Some of the images facilitate juxtaposition of the experiences on women of color and the rest of the community. For instance, the young man that video-recorded the McKinney, Texas pool party incident, a white teenager, asked Police Department supporters to imagine that the tackled teenage girl was their daughter.²⁶ The resulting image, for many, is unimaginable.

Yet videos are not necessarily less subject to alternative interpretations than other forms of evidence before courts. In assessing police interactions with people of color, many viewers hone in on non-deferential responses to law enforcement as justification for police actions. Viewers may also assume that events before the cellphone camera is turned on justify subsequent events. This view of deserved violence was common not just in situations involving men, but also against women of color. For instance, defenders of the officer that tackled the high school student have commented on the girl's deflection of the officer

²² Brown, *supra* note 11.

²³ Kiana Mwamba, *supra* note 1.

²⁴ Bair, *supra* note 4.

²⁵ *Id.*

²⁶ Ian Duncan, *Woman in Arrest Video Describe Violent Takedown by Police*, BALTIMORE SUN, Dec. 9, 2014, <http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-video-arrest-20141209-story.html>.

grabbing her as an attempted assault on the officer.²⁷ In Mwebwa's case, despite the evidence of an unwarranted assault by the officers in the video, the police department officials, in public statements, declared the footage of her arrest "inconclusive."²⁸

Visual legal scholars warn that though video seems to provide a true accounting of an event, there is no guarantee that it will garner the reaction that the user intends. Viewers come to videos with implicit biases that permeate the interpretation of the actions on the video.²⁹ Although proponents of reform hope that videos will shock people into changing mistreatment of women of color by law enforcement, the biases that lead to mistreatment also affect how viewers will see what is in the video. Use of videos, scholars argue, may reinforce existing biases. Additionally, a non-critical reliance on recordings fails to address why a video recording is necessary for the account and experiences of women of color and law enforcement to be taken seriously.

III. GUIDELINES FOR USE OF VIDEO

A. Ethical Concerns Raised with Women on Video

Video activists have outlined potential legal concerns with the creation and dissemination of cellphone and surveillance video encounters. Concerns include, sourcing videos, manipulation of video, privacy, and unintended traumatization. In July 2015, the ABA and NAACP Legal Defense and Education Fund issued a Joint Statement on Eliminating Bias in the Criminal Justice System. The statement acknowledged videos capturing the encounters between people of color and police this year have unveiled the realities of policing. In August 2015, the ABA American Bar Association established a task force on Body Cameras to establish best practices for capturing and using of the recordings.³⁰

B. Source/tampering

Journalism ethics provide a roadmap for legal advocacy involving videos. The National Press Photographers' Association's Code of Ethics mandates both sourcing of video material and transparency about manipulation. Scholars argue that sourcing material can help people draw a distinction between what they view as unfiltered truth and the reality of the production of video. If proper guidelines were in place, they would discourage undisclosed editing in videos shown to juries or disseminated to the public.

C. Anonymity

Another concern with captured cellphone footage of violent police encounters is the anonymity of individuals captured in the videos. The encounters often result in undignified, embarrassing, degradation of the women attacked. Often the victims are minors. Anonymity is a concern not only for the women in the videos, but also for bystanders to the abuse. For instance, anonymizing protestors in the background of footage capturing police abuses at a protest is a protected measure that should be taken to insure the privacy of

²⁷ Fausset and Southall, *supra* note 12.

²⁸ Fantz, Yan, and Shoichet, *supra* note 10.

²⁹ Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1756 (2015).

³⁰ American Bar Association Task Force on Law Enforcement Body Camera, http://www.americanbar.org/groups/criminal_justice/bodycamera.html

dissenters and the potential for retribution.³¹ Many cellphones do not have easily accessible anonymizing applications, and disclose identities that those captured may have preferred to remain private. Archiving videos have also posed a challenge, particularly citizen cellphone captures of police violence during protests.³²

Determining who can access body camera footage and use of identities captured on video is an issue currently before local police departments. Civil rights coalitions have collaborated on guidance for use of body cameras, specifically, limiting facial recognition technology.³³ The Department of Justice has also created a set of guidelines on use of video derived from police body cameras.³⁴

D. Vicarious Trauma and Desensitization

At the time that the video of Sandra Bland's arrest, members of the public expressed fatigue at the proliferation of videos showing abusive police encounters.³⁵ While the power of the image is in creating an emotional impact, at times inadvertent emotional responses to videos can impede the work advocates hope to accomplish. The potential for desensitization towards images of violence against women of color also threatens to undermine the usefulness of the videos in the movement for police reform. While protests certainly emerged in the aftermath of release of the full video, some people, particularly women of color, forestalled watching the video from fatigue and fear of traumatization.^{36,37} The impact of trauma could have an effect on jurors from affected communities that may engage in distancing from events captured on film.

IV. Conclusion

Videos capturing the encounters between women of color and police this year have unveiled the realities of policing. Events captured on surveillance, dash camera, and cellphone cameras have been used in high profile cases this year to propel reform, defend against criminal charges, and pursue lawsuits against police officials. Attorneys should be aware that capturing violence on video does not ensure reform. Without the proper check for bias, attorneys have seen attacks on their clients justified by some viewers. Despite debates surrounding events in videos, this year's viral images of women demonstrate a level of violence and mistreatment on par with violence against men. Videos allow those without experiences of violent policing to face the implicit threat of violence many women of color face from officials of the country's criminal justice systems. We must still consider whether our society has advanced in achieving equal treatment under law if videos are necessary for women of color, facing police violence, to be believed.

³¹ Yvonne Ng, *Ethical Wednesdays: Archives and Our Ethical Guidelines for Using Eyewitness Videos*, WITNESS Media Lab, <https://lab.witness.org/ethical-wednesdays-archives-and-our-ethical-guidelines-for-using-eyewitness-videos/>.

³² *Id.*

³³ Robinson Meyer, *The People's Manifesto on Police Body-Cameras*, THE ATLANTIC, May 15, 2015, <http://www.theatlantic.com/technology/archive/2015/05/civil-rights-rules-for-body-cameras/393377/>

³⁴ The Bureau of Justice Assistance, "BJA National Body-Worn Camera Toolkit," <https://www.bja.gov/bwc/>.

³⁵ Wanett Clyde, *The (Unexpected) Emotional Impact of Archiving*, WITNESS, <https://blog.witness.org/2015/08/the-unexpected-emotional-impact-of-archiving/>.

³⁶ Karen Attiah, <https://www.washingtonpost.com/blogs/post-partisan/wp/2015/07/24/how-black-people-can-emotionally-protect-themselves-in-the-age-of-blacklivesmatter/>.

³⁷ Chaedria, <http://www.elle.com/culture/career-politics/a31527/do-we-need-another-video-to-remind-us-that-black-girls-are-the-most-vulnerable/>.